



42nd Parliament, First Session

REPORT OF THE COMMITTEE

The Standing Committee on Procedure and House Affairs

has the honour to present its

SIXTY-FOURTH REPORT

Your Committee is pleased to report as follows:

Introduction

On February 1, 2018, the Standing Committee on Procedure and House Affairs (the Committee) unanimously adopted the following motion: "Pursuant to Standing Orders 108(1)(a) and 108(1)(c), a Subcommittee on a Code of Conduct for Members be established to conduct a thorough review of the Code of Conduct for Members of the House of Commons: Sexual Harassment; that the Subcommittee be composed of seven (7) members, of which four (4) shall be from the Government party, two (2) from the Official Opposition, and one (1) from the NDP; that the Whip of each party deposit with the Clerk of the Standing Committee on Procedure and House Affairs a list of his or her party's members to serve on the Subcommittee; that the Whip of each party submit his or her initial list of members to serve on the Subcommittee no later than February 5, 2018; that membership substitutions be permitted from time to time, if required, in the manner provided for in Standing Order 114(2); that the Subcommittee be chaired by a member of the Government party and that the member for Yukon be named Chair of the Subcommittee; that the Subcommittee be granted all the powers of the Committee pursuant to Standing Order 108(1); and that the Subcommittee have confidential access to the evidence taken by the Committee in camera during its review of the Code in September and October 2017."

During its study, the Subcommittee on the Code of Conduct for Members of the House of Commons: Sexual Harassment (the Subcommittee) held 10 meetings and heard testimony from the following witnesses: Ms. Catherine Beagan Flood, Partner, Blake,

Cassels & Graydon LLP; Mr. Philippe Dufresne, Law Clerk and Parliamentary Counsel, House of Commons; Mr. Pierre Parent, Chief Human Resources Officer, House of Commons; Ms. Anne Merritt, President of Quintet Consulting Corporation, Mr. Raphael Szajnfarder, Associate at Quintet Consulting Corporation; and Christine Thomlinson, Co-Founder and Co-Managing Partner Rubin-Thomlinson LLP.

The members of the Subcommittee wished to thank all of the witnesses for their important contributions and invaluable assistance during this study.

Background

In November 2014, the House of Commons adopted a motion instructing the Committee to, among other things, examine policy options for addressing complaints of harassment between members of the House of Commons and make recommendations for the prevention and resolution of harassment in the workplace. Subsequently, in December 2014, the Committee established a subcommittee to undertake such a study. The subcommittee's report was adopted by the Committee on June 4, 2014, presented in the House of Commons as Report 38, on June 8, 2014 and concurred in by the House on June 9, 2014.

In accordance with the report, the Standing Orders of the House of Commons were amended to include the Code of Conduct for Members of the House of Commons: Sexual Harassment (the Code) as an appendix. This change to the Standing Orders came into effect at the beginning of the 42nd Parliament on December 3, 2015. Furthermore, section 51 of the newly implemented Code called for the Committee to undertake a review of the Code no more than two years after its coming into force, or by December 2, 2017. As per section 51, on September 21, 2017, the Committee commenced a review of the Code. The study resulted in a report which was adopted by the Committee on October 24, 2017. Report 42 was presented to the House on October 25, 2017. While this report was not concurred in by the House, its contents were taken into account during the February 2018 review of the Code.

Summary of proposed new amendments to the existing Code

Following its February 2018 review under section 51 of the Code, the Subcommittee proposed a number of changes to the existing Code. The Committee agrees with these changes. This section provides a brief synopsis of the proposed amendments, grouped by theme.

a. Amending the Definition of Sexual Harassment

The Committee proposes that the existing definition of sexual harassment found in the Code be replaced by a modified version of the definition of sexual harassment found in the *House of Commons Policy on Preventing and Addressing Harassment*. This would create consistency between harassment policies in effect in the House. The new definition is based on a standard of reasonableness and has been expanded to state that, for greater certainty, an abuse of power or a power imbalance between two members is a

relevant factor but is not a necessary element for a finding of sexual harassment. The Committee also proposes that examples of sexual harassment be included in the Code, but that these do not form part of the definition.

b. Adopting a Screen for Initial Complaints

The Committee proposes that the Chief Human Resource Officer of the House of Commons (CHRO) should be allowed to screen out complaints where the alleged conduct clearly does not meet the definition of sexual harassment under the Code. Absent a screening process, the existing Code foresees an investigation for every formal complaint where mediation has either not been considered or has failed. This could potentially lead to investigations where the alleged conduct does not demonstrate a prima facie case of sexual harassment.

c. Inclusion of Legal Counsel/Support Person

The Committee proposes that the Code be clarified to state that the complainant and/or respondent are entitled to legal counsel and/or a support person, provided that the support person is a member of Parliament. The support person would be bound by the confidentiality requirements set out in the Code and subject to discipline by the House if he or she breaches confidentiality.

d. Clarifying Third Party Reporting

The Committee proposes that the Code be amended to clarify that a third party may initiate a complaint on behalf of a member of Parliament who has been the alleged target of sexual harassment. However, the subject of the alleged sexual harassment may halt the process at any time.

e. Creating a Limitation Period

The Committee proposes that a limitation period to report allegations of sexual harassment be established. The suggested limitation period is one year after the last occurrence of the alleged sexual harassment. The Committee also proposes that the CHRO be allowed to extend this deadline in extenuating circumstances. Imposing such a limitation period would reduce the risk of evidence "getting stale," while allowing some flexibility in extenuating circumstances.

f. Inclusion of an Investigation Protocol

The Committee proposes that the Code be amended to include an investigation protocol. This protocol would place a number of obligations on the investigator and specify, among other things, the order and manner of interviews and the information that must be communicated to those who participate in the formal investigation process. Absent direction from the Code, the investigation protocol could be created at the

discretion of the investigator, which could result in a lack of consistency between investigations.

g. Removing CHRO Instructions and Observations from Preparation of the Final Investigation Report

The Committee proposes that the external investigator engaged by the CHRO to conduct investigations of formal complaints of sexual harassment draft his or her report and determine whether the allegations have been made out without receiving observations or instructions from the CHRO. The existing Code allows the CHRO to provide observations and instructions for the final report.

h. Expanding the Appeal Process at Various Stages

The Committee proposes that the appeal process during various stages of the resolution process be expanded so that a complainant or respondent can challenge any final administrative decision in the investigation process, final investigation report, or proposed discipline by bringing the matter to the attention of the Standing Committee on Procedure and House Affairs.

i. Investigation to Continue Only as Long as the Respondent Remains a Member

The Committee proposes that, in the event that a complainant ceases to be a member of Parliament during the course of an investigation, the complainant may elect to continue the resolution process. In this situation, a respondent who remains a member of Parliament could still be subject to discipline from the House if the allegation is proven. Similarly, if a complainant is accused of a vexatious or bad faith complaint, and the respondent ceases to be a member of Parliament, the complainant could still be subject to discipline from the House if there is a positive finding that the complaint was vexatious or was made in bad faith. If a member is the subject of an allegation under this Code but ceases to be a member, the investigation would be halted.

j. Prohibiting Retaliation

The Committee proposes that the Code be amended to specifically prohibit retaliation against participants or potential participants in the Code's resolution process. Retaliation is defined as taking adverse measures against participants or potential participants.

Recommendation to Study Non-Sexual Harassment

The Committee recommends that the Standing Committee on Procedure and House Affairs consider whether mechanisms should be put in place to deal with allegations of non-sexual harassment between members, having regard to the specific context of members of Parliament's functions and realities.

Proceedings in Relation to the 42nd Report of the Standing Committee on Procedure and House Affairs

The Committee recommends that, notwithstanding any Standing Order or usual practice of the House, upon concurrence of this report, there be no further proceedings in relation to the 42nd Report of the Standing Committee on Procedure and House Affairs (Review of the Code of Conduct for Members of the House of Commons: Sexual Harassment); and accordingly, that notices of motion to concur in the 42nd Report be dropped from the Order Paper.

Changes to the Standing Orders

The Committee recommends that the Standing Orders be amended by replacing Appendix II, Code of Conduct for Members of the House of Commons: Sexual Harassment with the appendix set out in this report;

That the title of Appendix II be amended to read as follows: Code of Conduct for Members of the House of Commons: Sexual Harassment Between Members; and

That the Clerk of the House be authorized to make any required editorial and consequential alterations to the Standing Orders.

A copy of the relevant *Minutes of Proceedings* (Meetings Nos. 107 and 108) is tabled.

Respectfully submitted,

Hon. Larry Bagnell, P.C., M.P.
Chair

APPENDIX –
AMENDMENTS TO THE STANDING ORDERS

APPENDIX II
CODE OF CONDUCT FOR MEMBERS OF THE HOUSE OF COMMONS: SEXUAL HARASSMENT
BETWEEN MEMBERS

MISSION

1.

Purposes.

The purposes of this Code are to

- (a) create an environment at the House of Commons that allows all Members to excel in their public duties and functions and that is free of sexual harassment;
- (b) encourage reporting, by Members, of instances of sexual harassment;
- (c) establish a resolution process that is complainant-driven and that the complainant can bring to an end at any point;
- (d) ensure confidentiality throughout the resolution process, unless otherwise provided for in this Code; and
- (e) implement the recommendations of the 38th report of the Second Session of the 41st Parliament of the Standing Committee on Procedure and House Affairs.

INTERPRETATION

2.

Definitions.

The following definitions apply in this Code.

"day" « *jour* »

"day" means a working day.

"CHRO" « *dirigeant principal* »

"CHRO" means the Chief Human Resources Officer of the House of Commons Administration.

"complainant" « *plaignant* »

"complainant" means a Member who is the subject of alleged sexual harassment and

- (a) who reports the alleged sexual harassment in accordance with section 14; or
- (b) in respect of whom a third party reports the alleged sexual harassment in accordance with that section.

"investigator" « *enquêteur* »

"investigator" means an external investigator engaged by the CHRO to conduct an investigation of a formal complaint of sexual harassment on his or her behalf.

"participant" « *participant* »

"participant" means the complainant, respondent or any other individual involved in the resolution process.

"personal information" « *renseignement personnel* »

"personal information" means any information that would enable someone to identify an individual.

"resolution process" « *processus de résolution* »

"resolution process" includes the reporting of allegations of sexual harassment and the initiating of informal discussions, the mediation process, and the filing of a formal complaint and its investigation, as well as any disciplinary action that may be imposed.

"respondent" « *défendeur* »

"respondent" means a Member who is the subject of allegations of sexual harassment reported in accordance with section 14.

"sexual harassment" « *harcèlement sexuel* »

"sexual harassment" means any conduct of a sexual nature, including, a comment, gesture or contact, whether on a one-time or recurring basis, that might reasonably be expected to cause offence or humiliation.

A power imbalance between a complainant and a respondent or an abuse of power by the respondent is a relevant factor for a finding of sexual harassment; however, it is not a necessary element.

"third party" « *tiers* »

"third party" means a Member other than the complainant.

SCOPE

3.

Application.

This Code applies only to allegations of sexual harassment between Members.

4.

On behalf of the House.

The CHRO, in carrying out his or her functions under this Code, is acting for and on behalf of the House of Commons.

5.

Member ceases to serve.

(1) Subject to subsections (2) and (3), no further measures are to be taken under this Code if the complainant or respondent ceases to be a Member.

Exception – complainant.

(2) A complainant who ceases to be a Member may continue the resolution process and the referral to the Standing Committee on Procedure and House Affairs if the respondent has not ceased to be a Member.

Exception – respondent.

(3) A respondent who ceases to be a Member may, in respect of a complaint that is alleged to be potentially vexatious or in bad faith, continue the resolution process and the referral to the Standing

Committee on Procedure and House Affairs if the complainant has not ceased to be a Member.

Dissolution.

(4) For the purposes of this Code, a Member does not cease to be a Member during a dissolution period.

RULES OF CONDUCT

6.

Sexual harassment prohibited.

A Member shall not sexually harass another Member.

7.

Educational examples.

Sexual harassment is defined in section 2, and this section does not add to, nor detract from, that definition and is included solely for educational purposes. Without limiting the definition of sexual harassment in any manner, sexual harassment may include the following:

- (a) demands for sexual favours or sexual assault;
- (b) inappropriate or unwanted physical contact such as touching, patting or pinching;
- (c) insulting comments, gestures or practical jokes of a sexual nature that cause discomfort or embarrassment;
and
- (d) inappropriate enquiries or comments about an individual's sex life.

Sexual harassment can occur, for example, while Members are travelling or at a social function.

8.

Respect confidentiality and privacy.

A Member or any other person involved in the process shall not disclose information related to the resolution process or any personal information related to any participant, unless otherwise provided for in this Code.

9.

For greater certainty.

For greater certainty, the obligation described in section 8 to maintain confidentiality and privacy also applies before a formal complaint is filed.

10.

Retaliation.

(1) A Member shall not retaliate or threaten retaliation against any individual because that individual has been a participant or potential participant in the resolution process under this Code.

For greater certainty.

(2) For greater certainty, retaliation includes the taking of any adverse measures against an individual under subsection (1).

11.

Pledge.

Every Member shall commit to contributing to a work environment free of sexual harassment by signing the pledge in the form set out in Form 1 and returning it to the CHRO within 60 days after the notice of his or her election to the House of Commons is published in the *Canada Gazette*, or within the first 30 sitting days of the ensuing Parliament or, in the case of a Member elected at a by-election, within the first 30 sitting days following the Member's introduction in the House, whichever is later.

RESOLUTION PROCESS

LEGAL COUNSEL AND SUPPORT PERSONS

12.

Legal counsel and support person.

(1) During the resolution process, the complainant and the respondent are entitled to be represented by legal counsel and to be accompanied by a support person, as long as the support person is a Member of Parliament. However, in any referral to the Standing Committee on Procedure and House Affairs, the Committee shall make a decision regarding whether or not the complainant or respondent is entitled to be represented by legal counsel or accompanied by a support person.

No representations.

(2) In supporting a complainant or respondent, a support person shall not make representations and shall respect confidentiality at all times.

TIMELINES

13.

Extension.

Any timelines set out in this Code may be extended by the CHRO, in exceptional circumstances, or by mutual agreement of the complainant and the respondent.

REPORTING ALLEGATIONS OF SEXUAL HARASSMENT AND INITIATING DISCUSSIONS

14.

Report by complainant or third party.

(1) Allegations of sexual harassment may be reported by the complainant or a third party; they must not be reported anonymously.

Report within one year.

(2) The allegations must be reported within one year after the occurrence of the last incident to which they relate. The CHRO may extend the period if, in the CHRO's opinion, exceptional circumstances warrant an extension.

Report to CHRO or Whip – complainant.

(3) The complainant may report the allegations to the CHRO or, if the complainant and the respondent are members of the same caucus, to the Whip of the caucus.

Report to CHRO or Whip – third party.

(4) A third party may report the allegations to the CHRO or, if the third party, the complainant and the respondent are members of the same caucus, to the Whip of the caucus.

Exception – Independent Members.

(5) If the complainant or the respondent is an independent Member, any sexual harassment allegations involving them shall be dealt with by the CHRO or an individual designated by the CHRO.

Authority over discussions.

(6) The CHRO or Whip, as the case may be, shall manage the discussions relating to the allegations of sexual harassment.

CHRO or Whip to discuss.

(7) The CHRO or Whip, as the case may be, shall inform the respondent of the allegations reported and may request additional information from the respondent.

CHRO or Whip to facilitate.

(8) The CHRO or Whip, as the case may be, may facilitate discussions between the complainant and the respondent in order to resolve the issue.

CHRO participation.

(9) If the sexual harassment allegations are reported to the Whip, the Whip may invite the CHRO to participate in the discussions.

15.

Notification – no further measures.

(1) The complainant may, at any time, notify the CHRO or the Whip, as the case may be, that they do not wish any further measures to be taken under this Code in respect of the matter.

Effect of notification.

(2) If notice is given under subsection (1), the CHRO or the Whip, as the case may be, shall not take any further measures under this Code in respect of the matter, unless the complainant is being investigated for having filed a potential vexatious or bad faith complaint.

16.

Decision respected.

All participants shall be bound to the complainant's choice of the CHRO or Whip under section 14.

17.

Whip involved.

Despite section 14, if the Whip of a party is either the complainant or the respondent, the House Leader of that party shall assume the role of the Whip.

18.

Matter dealt with by CHRO.

With regard to sexual harassment allegations that are reported to a Whip under section 14, the complainant may, at any time during the resolution process, choose to have the matter dealt with by the CHRO.

19.

Administration of process.

If the sexual harassment allegation is first reported to a Whip under section 14, the Whip may communicate with the CHRO for the purpose of aiding in the administration of the resolution process, including record-keeping.

20.

Whip involvement.

The complainant and the respondent may choose to be assisted by their respective Whips at any time during the resolution process.

MEDIATION

21.

Encourage mediation.

The CHRO or Whip, as the case may be, shall offer mediation at all stages of the resolution process and, in particular, before a formal complaint is filed.

22.

Mediation.

(1) Upon the completion of the discussions described in section 14, the CHRO or Whip, as the case may be, shall raise with the complainant and respondent the possibility of resolution through mediation.

Arrangements.

(2) If the complainant and respondent agree to mediation, the CHRO shall make arrangements for confidential mediation with a mediator acceptable to the complainant and respondent.

Agreement to mediate.

(3) If the complainant and respondent agree to mediation, they shall sign a mediation agreement that outlines their specific obligations of confidentiality and privacy during the mediation process.

23.

Materials and information confidential.

All materials prepared for, and information exchanged at, mediation shall be confidential.

24.

Mediation paid from central budget.

Where the mediator is engaged from outside the House of Commons Administration, the costs of the mediation shall be paid from a central budget of the House of Commons Administration.

25.

Facilitation services.

Members have access at all times to the House of Commons Administration's program which provides facilitation services and which is presently called *Finding Solutions Together*.

FORMAL COMPLAINT, PRELIMINARY REVIEW, REFERRAL, AND INVESTIGATION

26.

Formal complaint filed.

(1) If the complainant and respondent do not agree to proceed by mediation, or if the matter is not resolved to the complainant's satisfaction, the complainant may file a formal complaint with the CHRO that the respondent has engaged in sexual harassment.

Form of complaint.

(2) The complaint shall be in writing, shall be signed by the complainant and shall include a

description of the nature of the alleged sexual harassment and the identity of the respondent.

27.

Preliminary review.

(1) On receipt of a formal complaint, the CHRO shall review the complaint to determine whether the alleged facts, if proven, could constitute sexual harassment.

Decision on preliminary review.

(2) If the CHRO determines that the alleged facts, if proven, could not constitute sexual harassment, the CHRO shall provide the complainant with a report that sets out the reasons for the decision.

Copies of complaint.

(3) After having reviewed the complaint and having determined that the alleged facts, if proven, could constitute sexual harassment, the CHRO shall, without delay, provide the respondent with a copy of the complaint filed under subsection 26(1). The CHRO shall also inform the Whip of the complainant and the Whip of the respondent and provide them with a copy of the complaint.

Informing complainant and respondent.

(4) Within 15 days of providing the complaint to the respondent, the CHRO shall inform the complainant and the respondent that an investigator is to be engaged under section 35.

28.

Referral to the Standing Committee on Procedure and House Affairs.

(1) If the complainant is not satisfied with a decision made under subsection 27(2), the complainant may, within 15 days of being advised of the decision, make a request to the Chair of the Standing Committee on Procedure and House Affairs that the Standing Committee on Procedure and House Affairs render a decision on the matter.

Notification.

(2) The Chair of the Standing Committee on Procedure and House Affairs shall notify the CHRO of the referral. The CHRO shall, without delay, provide the respondent with a copy of the complaint filed under subsection 26 (1), and a copy of the report issued under subsection 27(2).

Request by the Whip – consent.

(3) For the purpose of subsection (1), the Whip of the complainant may make a request to the Chair of the Standing Committee on Procedure and House Affairs, with the consent of the complainant.

Written request.

(4) Any request made to the Chair of the Standing Committee on Procedure and House Affairs under subsection (1) or (3) shall be made in writing and shall include a copy of the CHRO's preliminary review report.

Chair to convene meeting upon written request – 48 hours' notice required.

(5) Within five days of the receipt of a request, the Chair of the Standing Committee on Procedure and House Affairs shall fix a Committee meeting that is to be held *in camera* within the following 60 days. The Chair shall, as soon as possible, provide the Committee members with notice of the meeting. In no case shall the Chair provide less than 48 hours' notice of the meeting.

29.

Proceedings to be *in camera*.

(1) The Standing Committee on Procedure and House Affairs shall hold its proceedings under this Code *in camera*.

Retention of documents.

(2) The Committee shall retain all evidence and documentation, including *in camera* transcripts, related to its proceedings for a period of five years following the final applicable step in the referral, or following the date the matter was deemed withdrawn from the Committee, pursuant to section 31 or 32 of this Code, as the case may be.

Destruction of documents.

(3) At the conclusion of the period provided for in subsection (2), the Clerk of the House shall cause all evidence and documentation related to the Committee's proceedings, including *in camera* transcripts, to be destroyed unless the Committee directs otherwise.

30.

Appearance of complainant and respondent.

The complainant and respondent shall have the opportunity to appear before the Standing Committee on Procedure and House Affairs in relation to any matter referred to it pursuant to section 28.

31.

Withdrawal of matter from Committee.

Until the Standing Committee on Procedure and House Affairs has rendered its decision, the complainant may indicate in writing to the Chair that he or she no longer wishes to pursue the matter, at which time it is deemed withdrawn from the Committee.

32.

Respondent ceases to be a Member.

In the event that a respondent ceases to be a Member during the course of the Committee's consideration of the matter, the matter is deemed withdrawn from the Standing Committee on Procedure and House Affairs, and no further measures are to be taken under this Code, unless the measures to be taken are in response to a potentially vexatious or bad faith complaint and the complainant has not ceased to be a Member.

33.

Decision.

At the conclusion of the Committee's consideration of the matter referred to it pursuant to section 28, the decision of the Standing Committee on Procedure and House Affairs will be one of the following:

(a) to uphold the CHRO's decision; or

(b) to request that the CHRO engage an investigator under section 35.

34.

Final decision.

The decision of the Standing Committee on Procedure and House Affairs shall not disclose the identity of any of the participants and shall respect the privacy of the complainant and other individuals. The decision of the Standing Committee on Procedure and House Affairs shall be the final decision on the preliminary review.

35.

Investigator engaged.

(1) Subject to section 27, the CHRO shall engage an investigator to investigate the complaint filed under section 26.

Adjustment – scope of investigation.

(2) The investigator may determine to adjust the scope of the investigation when some or all of the facts are not in dispute.

36.

Conduct of investigation.

(1) The investigator shall investigate the allegations that are the subject of the complaint in a fair, impartial and timely manner and in accordance with Schedule 2.

Informing complainant.

(2) The complainant should be advised at the earliest opportunity if he or she is being investigated for having filed a potentially vexatious or bad faith complaint.

37.

Draft investigation report – findings of fact.

(1) Within 30 days of the completion of the interviews conducted in accordance with Schedule 2, the investigator shall prepare a draft investigation report containing the proposed findings of fact and provide the CHRO, the complainant and the respondent with copies for their review.

Errors of fact.

(2) The complainant and the respondent may, within 15 days following receipt of the draft report, provide the investigator with written submissions on any alleged errors of fact.

Reasons – witness not interviewed.

(3) If applicable, the draft report must also include the reasons why a witness whose name was proposed by the complainant or the respondent was not interviewed by the investigator.

Review by investigator.

(4) The investigator shall review any submissions made by the complainant and the respondent.

38.

Draft investigation report.

(1) Within 30 days of receipt of the submissions made under subsection 37(2), or the expiry of the 15-day period for providing written submissions, the investigator shall prepare a draft investigation report containing the revised findings of fact, if applicable, the investigator's proposed conclusions, and the reasons for the conclusions and shall provide the CHRO, the complainant and the respondent with copies for their review.

Conclusions.

(2) The draft report must contain one of the following conclusions:

(a) on a balance of probabilities, the respondent engaged in sexual harassment;

(b) on a balance of probabilities, the respondent did not engage in sexual harassment; or

(c) on a balance of probabilities, the respondent did not engage in sexual harassment, and the complaint was vexatious or made in bad faith.

Submissions.

(3) The complainant and the respondent may, within 15 days of receipt of the draft report, provide the investigator with written submissions regarding the conclusions.

Review by investigator.

(4) The investigator shall review any submissions made by the complainant and the respondent.

39.

Final investigation report.

Within 30 days of receipt of submissions made under subsection 38(3), or the expiry of the 15-day period for providing written submissions, the investigator shall prepare the final investigation report containing the findings of fact, the investigator's conclusions and the reasons for the conclusions and provide the complainant, the respondent and the CHRO with copies.

40.

Next steps.

The CHRO shall inform the complainant and the respondent of the various courses of action available to them to address the conclusions set out in the final investigation report.

41.

Mediation.

At any time during the investigation, the complainant and the respondent may agree to suspend the investigation and resolve the issue through mediation.

DECISION

REFERRAL TO THE WHIP

42.

Further actions.

(1) If the final investigation report in relation to a formal complaint indicates that, on a balance of probabilities, the respondent engaged in sexual harassment, the complainant may notify the CHRO, in writing, within 15 days of receiving the final investigation report that he or she believes the matter warrants further action.

Attention of the Whip.

(2) On receiving a notice under subsection (1), the CHRO shall inform the respondent's Whip of the notice, in writing, and shall submit the final investigation report to the Whip.

43.

Vexatious complaints or complaints made in bad faith.

(1) If the final investigation report in relation to a formal complaint indicates that the complaint was vexatious or made in bad faith, the respondent may notify the CHRO, in writing, within 15 days of receiving the final investigation report, that he or she believes the matter warrants further action.

Attention of the Whip.

(2) On receiving a notice under subsection (1), the CHRO shall inform the complainant's Whip

of the notice, in writing, and shall submit the final investigation report to the Whip.

44.

Proposed discipline.

(1) Within 15 days of receiving a notice under subsection 42(2) or 43(2), the Whip concerned shall provide the CHRO with a proposed course of disciplinary action.

Inform.

(2) The CHRO shall inform the following individuals of the proposed course of disciplinary action:

(a) the complainant, in the case where the final investigation report indicates that, on a balance of probabilities, the respondent engaged in sexual harassment; and

(b) the respondent, in the case where the final investigation report indicates that a complaint was vexatious or made in bad faith.

Additional remedies.

(3) If the disciplinary action proposed by the Whip under subsection (1) is not satisfactory to the complainant or the respondent, as the case may be, the complainant or the respondent may suggest a further course of disciplinary action to the CHRO within 15 days of being informed under subsection (2).

Communicate.

(4) The CHRO shall inform the Whip concerned of the further course of disciplinary action suggested under subsection (3).

Deemed to be resolved.

(5) If there is agreement on the course of disciplinary action pursuant to subsection (2) or (4), the matter is deemed to be resolved.

Discipline.

(6) Once the matter is deemed to be resolved, the Whip in question shall implement the course of disciplinary action.

45.

Independent Member.

If the respondent, or complainant who was found to have filed a vexatious or bad faith complaint, is an independent Member, the CHRO shall propose a course of disciplinary action to both the complainant and the respondent. Where there is agreement on the course of disciplinary action, the matter is deemed to be resolved, and the course of disciplinary action shall be implemented.

REFERRAL TO THE STANDING COMMITTEE ON PROCEDURE AND HOUSE AFFAIRS

46.

Request to the Standing Committee on Procedure and House Affairs.

(1) If the complainant or the respondent is not satisfied with the investigation process, the final investigation report or the course of proposed disciplinary action the complainant or respondent may, within 15 days of being advised of the final proposed disciplinary action, or the final applicable step in the process for the particular matter, make a request to the Chair of the Standing Committee on Procedure and House Affairs that the Standing Committee on Procedure and House Affairs render decisions or make recommendations on one or more of the matters listed

above.

Request by the Whip – consent.

(2) For the purpose of subsection (1), the Whip of the complainant or the respondent may make a request to the Chair of the Standing Committee on Procedure and House Affairs, with the consent of the complainant or the respondent.

Written request.

(3) Any request made to the Chair of the Standing Committee on Procedure and House Affairs under subsection (1) or (2) shall be made in writing and shall include a copy of the final investigation report.

Chair to convene meeting upon written request – 48 hours' notice required.

(4) Within five days of the receipt of a request, the Chair of the Standing Committee on Procedure and House Affairs shall fix a Committee meeting that is to be held *in camera* within the following 60 days. The Chair shall, as soon as possible, provide the Committee members with notice of the meeting. In no case shall the Chair provide less than 48 hours' notice of the meeting.

47.

Inquiry to be *in camera*.

(1) The Standing Committee on Procedure and House Affairs shall hold its proceedings under this Code *in camera*. The Committee shall determine whether all or part of the final investigation report – or a summary of it – may be used as evidence before the Committee.

Retention of documents.

The Committee shall retain all evidence and documentation, including *in camera* transcripts, related to its inquiry for a period of five years following the date of the presentation of its report to the House of Commons, pursuant to section 54 of this Code, or the final applicable step in the referral, or following the date the matter was deemed withdrawn from the Committee, pursuant to section 49 or 50 of this Code, as the case may be.

Destruction of documents.

(2) At the conclusion of the period provided for in subsection (2), the Clerk of the House shall cause all evidence and documentation related to the Committee's inquiry, including *in camera* transcripts, to be destroyed unless the Committee directs otherwise.

48.

Appearance of complainant and respondent.

The complainant and respondent shall have the opportunity to appear before the Standing Committee on Procedure and House Affairs in relation to the report.

49.

Withdrawal of matter from Committee.

Until the Standing Committee on Procedure and House Affairs presents its report to the House of Commons under section 54, the Member who requested that the Committee study the matter may indicate in writing to the Chair that he or she no longer wishes to pursue the matter, at which time it is deemed withdrawn from the Committee.

50.

Respondent ceases to be a Member.

(1) In the event that a respondent, or a complainant who was found to have filed a vexatious or bad

faith complaint, ceases to be a Member during the course of the Committee's study, the matter is deemed withdrawn from the Standing Committee on Procedure and House Affairs, and no further measures are to be taken under this Code.

Potentially vexatious or bad faith complaint.

(2) In the event that a respondent who alleges that a complaint is potentially vexatious or in bad faith ceases to be a Member during the course of the Committee's study, he or she can choose to continue the Committee's study if the complainant has not ceased to be a Member.

51.

Reasons.

The Standing Committee on Procedure and House Affairs shall include in the report the reasons for any conclusions and recommendations.

52.

Report.

The report of the Standing Committee on Procedure and House Affairs shall contain only a summary of the final investigation report, shall not disclose the identity of any of the participants and shall respect the privacy of the complainant and other individuals who provided evidence.

53.

Sanctions.

In its report, the Standing Committee on Procedure and House Affairs may recommend any appropriate sanctions available to the House of Commons. The Member being sanctioned may be named in the report.

REFERRAL TO THE HOUSE OF COMMONS

54.

Reports from Committee.

Following the adoption of a report by the Standing Committee on Procedure and House Affairs regarding the potential discipline of a Member pursuant to this Code, the Chair of the Committee shall present this report to the House forthwith, pursuant to Standing Order 35(1).

55.

Member may address House – confidentiality respected.

Within 10 sitting days after the presentation of the report of the Standing Committee on Procedure and House Affairs, either party has the right to make a statement in the House, provided that he or she does not speak for more than 20 minutes and that he or she respects the confidentiality of the resolution process and the privacy of the Members involved and of other individuals who provided evidence.

56.

Motion to concur in a report.

(1) A motion to concur in a report of the Standing Committee on Procedure and House Affairs made pursuant to this Code may be moved during Routine Proceedings, provided that the notice period, pursuant to Standing Order 54(1), is respected and that any motion to concur in the report shall not be moved until either the Member has made a statement pursuant to section 55 or ten sitting days have elapsed since the presentation of the report.

Debate on concurrence in a Committee report.

(2) A motion moved pursuant to subsection (1) shall be considered for no more than three hours, after which time, unless previously disposed of, the Speaker shall interrupt any proceedings then before the House and put all questions necessary to dispose of the motion without further debate or amendment. During debate on the motion, no Member shall speak more than once or longer than ten minutes and if the debate is adjourned or interrupted:

(a) the motion shall again be considered on a day designated by the Speaker after consultation with the House Leaders of the recognized parties, but in any case not later than the tenth sitting day after the adjournment or interruption;

(b) debate on the motion shall be resumed at the ordinary hour of daily adjournment on the day designated pursuant to paragraph (a) and shall not be further adjourned or interrupted; and

(c) when no Member rises to speak or after a total of three hours of debate, whichever is earlier, the Speaker shall put all questions necessary to dispose of the motion, provided that, if a recorded division is requested on the motion considered on a day designated pursuant to paragraph (a) of this subsection, it shall stand deferred to an appointed time on the next Wednesday, no later than the expiry of the time provided for Government Orders on that day.

Vote.

(3) If no motion pursuant to this section has been moved and disposed of, a motion to concur in the report shall be deemed to have been proposed on the 30th sitting day after the day on which the report was presented to the House. At the expiry of the time provided for Government Orders, the Speaker shall put forthwith every question necessary to dispose of the motion, provided that either the Chief Government Whip or the Chief Opposition Whip may ask the Speaker to defer the division to an appointed time no later than the ordinary hour of daily adjournment on the next sitting day that is not a Friday.

57.

Confidentiality.

Statements made in the House of Commons regarding a specific matter related to this Code must respect the confidentiality of the resolution process and the privacy of the Members involved and of other individuals who provided evidence.

58.

Referral back to Committee.

At any time before the House has concurred in the report, the House may refer the report back to the Standing Committee on Procedure and House Affairs for further consideration.

59.

Vacancy.

In the event that the Member who is the subject of potential discipline ceases to be a Member of the House of Commons following the presentation of the report of the Standing Committee on Procedure and House Affairs to the House, any motion to concur in the report is deemed withdrawn and dropped from the *Order Paper*.

60.

Effect of prorogation or dissolution.

Following a prorogation or dissolution of Parliament, provided that the respondent, or a complainant who was found to have filed a vexatious or bad faith complaint, remain Members of the House:

(a) the complainant or respondent, or the appropriate Whip with the consent of the Member involved, may resubmit the matter to the attention of the Chair of the Standing Committee on Procedure and House Affairs in writing, at which time the procedures outlined in section 46 shall apply; and

(b) once seized of the matter in accordance with paragraph (a), the Standing Committee on Procedure and House Affairs may present the report of findings to the House anew, provided that the House had not concurred in the Committee's report in the previous session or Parliament.

SUSPENSION OF THE RESOLUTION PROCESS

61.

Suspension of resolution process.

(1) The CHRO shall immediately suspend the resolution process if:

(a) there are reasonable grounds to believe that a Member has committed an offence under an Act of Parliament or provincial legislation, in which case the CHRO shall, in consultation with the Law Clerk and Parliamentary Counsel, notify the proper authorities of his or her belief; or

(b) it is discovered that the conduct under investigation is also the subject of an investigation to determine if an offence under an Act of Parliament or provincial legislation has been committed or that a charge has been laid with respect to that act.

Resolution process continued.

(2) The CHRO shall not continue the resolution process until the other investigation has been completed or there has been a final disposition of the charge laid with respect to that conduct.

Dissolution period.

(3) The resolution process is suspended during the dissolution period.

RETALIATION

62.

Report by complainant of retaliation.

(1) Allegations of retaliation may be reported by the complainant to the CHRO.

Report within one year.

(2) The allegations must be reported within one year after the occurrence of the last incident to which they relate. The CHRO may extend the period if, in the CHRO's opinion, exceptional circumstances warrant an extension.

63.

Application.

The resolution process, as well as the provisions of this Code relating to referral to the Standing Committee on Procedural and House Affairs and those relating to referral to the House of Commons apply, with such modifications as may be required, in respect of any allegations of retaliation brought by a complainant.

CONFIDENTIALITY

64.

Information publicly disclosed.

Any public disclosure, by the CHRO, of personal information or of information related to the resolution process shall only be made in accordance with the terms of the resolution of a complaint, and shall be no more than is sufficient for the public to understand the circumstances and consequences of the resolution.

65.

Sanctions against Member.

Where the House of Commons takes action against a Member, the House may only disclose information if it is necessary to explain any consequences for a Member.

66.

Reference to the Standing Committee on Procedure and House Affairs.

If confidential information has been communicated to the public in violation of this Code or the pledge, the matter shall be referred to the Standing Committee on Procedure and House Affairs to be dealt with in any manner that the Committee deems appropriate.

EDUCATIONAL ACTIVITIES

67.

Educational activities.

The CHRO shall undertake educational activities for Members on the content of this Code and on matters related to the prevention of sexual harassment.

68.

New Parliament.

The CHRO shall brief Members on the contents of this Code at the start of each new Parliament.

MISCELLANEOUS

69.

Retention of documents by CHRO.

The CHRO shall retain all documents relating to an allegation raised or a formal complaint filed under this Code for a period of five years from the date the matter was resolved, after which the documents shall be destroyed, unless a charge has been laid against the respondent under an Act of Parliament and the documents may be relevant to that matter.

70.

Review after implementation.

The Standing Committee on Procedure and House Affairs shall undertake a review of this Code no more than two years after its coming into force.

71.

Part of the Standing Orders.

This Code shall form part of the Standing Orders of the House of Commons.

SCHEDULE 1

FORM 1

As part of the House of Commons' mission to create an environment in which all individuals can excel, I,....., Member of Parliament, commit to contribute to a work environment free of sexual harassment. I recognize that part of our mission is to create a workplace free of sexual harassment and that sexual harassment among Members of Parliament is strictly prohibited. I further commit to following the *Code of Conduct for Members of the House of Commons: Sexual Harassment*, and to respect confidentiality in accordance with the principles set out in this Code.

SCHEDULE 2

Conduct of Investigations

General Guidelines

1. The investigator shall conduct the investigation in accordance with the principles of procedural fairness as set out in this Code while using his or her discretionary power to conduct the investigation in the most appropriate manner.
2. The investigator shall review the allegations and ensure that all relevant documentation has been identified. The investigator shall also review all documentation and responses, as applicable.
3. The CHRO shall assist with the administrative aspect of the investigation, including by providing contact information of the complainant, the respondent and the witnesses to be interviewed and arranging meeting locations.
4. The investigator shall ensure that the complainant and the respondent have been notified of their right to be represented by legal counsel and accompanied by a support person, as long as the support person is a Member of Parliament, during the investigation process and of the importance of maintaining confidentiality.
5. The investigator shall provide the complainant, the respondent and any witnesses with the opportunity to be heard and shall conduct all interviews in a fair, impartial and professional manner. He or she shall ensure that the complainant, the respondent and any witnesses are asked to sign and date witness statements once they have had an opportunity to review the interview notes to confirm their accuracy.
6. The investigator shall take all necessary precautions to ensure that the investigative process is carried out with due diligence, and shall respect confidentiality in accordance with the principles set out in this Code.

Investigation Process

7. The investigator shall contact the complainant and the respondent and explain to them the investigator's mandate and role and the investigation process.
8. The investigator shall interview the complainant, the respondent and any witnesses in person or, if it is not practicable to do so in the circumstances, by any other means, including by telephone or other means of telecommunication.

9. The complainant and the respondent have the right to identify witnesses. If the name of a witness is proposed and the investigator decides not to interview that person, the investigator must keep a written record of the reasons for the decision.

10. The investigator shall advise witnesses that:

- they must respect the confidentiality of the investigation process;
- their name and all information they provide will be part of the record;
- the investigator is not authorized to conceal relevant information or the source of information;
- investigation reports do not unnecessarily include damaging or personal information;
- their names will be used in the investigation reports; and
- they will be requested to sign their statements.

11. The investigator may interview any person who, in the investigator's opinion, could provide any additional information relevant to the determination of the facts relating to the allegations.

12. The investigator may request all relevant documents and files related to the investigation.

13. The investigator shall provide the CHRO with a report on the status of the investigation on a regular basis or at the request of the CHRO.